

ESTATE OF STANLEY STYLES

IBLA 83-703

Decided August 26, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 117733 through N MC 117764 and N MC 185002 through N MC 185005.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute,

Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Hy Forgeron, Esq., Battle Mountain, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of May 16, 1983, the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Apex, Apex #2 through #5, Moonlight, Moonlight #1, Holy Child #201 and #202, Styles #101 through #121, SS #1 through #4 lode mining claims, N MC 117733 through N MC 117764 and N MC 185002 through N MC 185005, abandoned and void because no proof of labor or notice of intention to hold the claims for 1982 was filed with BLM by December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Counsel for appellant states that Stanley Styles died December 3, 1982. The proof of labor for 1982 was recorded in Lander County, Nevada, September 2, 1982. Failure to file a copy of the 1982 proof of labor with BLM was not discovered by the heirs of Mr. Styles until after January 1, 1983.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, to file with the proper office of BLM on or before October 22, 1979, a copy of the recorded location notice and to file in the office where the location notice is recorded and in the proper office of BLM evidence of assessment work performed on the claim, and a proof of labor or notice of intention to hold the claim prior to December 31 of every calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1982 was timely filed with BLM, BLM properly deemed the claims to be abandoned and void. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claims. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences, no matter how meritorious the appeal. Lynn Keith, 53 IBLA 192, 88 I.D. at 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 196, 88 I.D. at 371-72.

Appellant concedes that the proof of labor was not transmitted to BLM in 1982. Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

BLM stated that it did not receive the 1982 proof of labor for the claims. Appellant concedes that the proof of labor was not sent to BLM. Therefore, it must be found that BLM was not acting improperly in its decision declaring the claims abandoned and void, under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

